

Drainage ditches, stormwater ponds, log ponds, and jurisdiction.

Portland District has recently received several inquiries regarding whether the U.S. Army Corps of Engineers (Corps) has jurisdiction over drainage ditches, stormwater ponds, and log ponds. For each of these three, the ***question of jurisdiction*** must be determined on a case-by-case basis but some generalizations can be made.

Portland District generally does not consider drainage ditches excavated in upland (i.e., non-wetland areas) to be within its jurisdiction. However, the Corps will regulate drainage ditches excavated in wetlands where the excavated material is sidecast into the wetland ; the jurisdictional status of a water of the U.S., such as a wetland, cannot be changed through excavation and sidecasting. However, where material is excavated and transported to an upland site is not regulated by the Corps as long as this does not occur in navigable waters. In addition, there are a few instances where drainage ditches excavated from upland are utilized by coho salmon. Factors such as that could cause the Corps to exert jurisdiction over a given upland ditch. You should also bear in mind that many “drainage ditches” in Oregon are, in fact, channelized streams. Portland District will consider such streams to be within its jurisdiction, even though they may now look like, and act like, man-made drainage ditches. Note also that if a ditch excavated from upland is abandoned and takes on the characteristics of a wetland, we would likely consider it within our jurisdiction.

Portland District generally does not consider isolated stormwater ponds that have been excavated from upland to be within its jurisdiction. However, as with drainage ditches, Portland District will regulate stormwater ponds excavated from wetlands or other waters of the U.S where the excavated material is sidecast into wetland or other waters. Note that many stormwater ponds capture the flow from intermittent drainages. If a drainage has a discernible ordinary high water mark, then Portland District will consider it to be an intermittent stream within the Corps’ jurisdiction. In that case, the stormwater pond would amount to an impoundment of a jurisdictional water, and would also be within the Corps’ jurisdiction. As with drainage ditches, if a stormwater pond excavated from upland is abandoned and takes on the characteristics of a wetland, we would likely consider it within our jurisdiction.

Portland District generally will consider log ponds to be within its jurisdiction. Most log ponds were constructed by a combination of excavation of a low-lying area and the impoundment of the stream flowing through that area. Frequently the excavated area was wetland. As with stormwater ponds, log ponds excavated from wetland where the excavated material is sidecast into wetland or other waters will continue to be within the Corps’ jurisdiction. In addition, the fact that these ponds were generally formed by impounding a stream that is within the Corps’ jurisdiction means that the pond will be within the Corps jurisdiction for

that reason also. Some of the confusion regarding the jurisdictional status of log ponds appears to arise from the fact that the State of Oregon requires a permit under the National Pollutant Discharge Elimination System (NPDES) for the discharge of excess rainwater from that log pond. Corps of Engineers regulations provide that waste treatment systems are not waters of the U.S., and therefore are not within the Corps' jurisdiction. Some parties have maintained that the fact that they have an NPDES permit for a log pond means that the log pond is a waste treatment system, and therefore is not within the Corps' jurisdiction. Portland District generally does not accept that argument. There are a few instances in which a log pond is now being used as an integral of the system for treating mill effluent. However, most ponds are not. The simple fact that an NPDES permit has been issued for the discharge of excess rainwater from a log pond does not mean that the log pond is a waste treatment system, no more than the fact that a permit exists for the discharge from a pulp mill means that the entire pulp mill is a waste treatment system.

We stress that jurisdictional determinations on these areas must be made on a case-by-case basis. Therefore, if you have any questions regarding the jurisdictional status of such an area, we encourage you to contact the permit evaluation project manager for the appropriate county.